that TBF's renewal expectancy must be diminished. See Fox Television Stations, Inc., 8 FCC Rcd at 2390, citing United Broadcasting Co., Inc., 57 RR 2d 887, 897 (1985).

318. Finally, with respect to Criterion 5, the findings demonstrate and it is concluded that TBF has rendered substantial efforts at community outreach throughout the license term. In this regard, the station's program for collecting and distributing food and clothing to the needy provided a valuable service by helping thousands of persons in the Miami area. In addition, WHFT(TV)'s "Prayer Line" allowed hundreds of people in the Miami area to obtain counsel and advice during times of need. Indeed, it appears that the level and quality of TBF's community outreach are certainly as praiseworthy as the outreach efforts lauded by the Commission in other comparative renewal cases. See, e.g., Fox Television Stations, Inc., 8 FCC Rcd at 2416-8; Metroplex Communications, Inc., 4 FCC Rcd 8149, 8156 (Rev. Bd. 1989) (subsequent history omitted). It must be concluded that TBF's outreach efforts reflect a sincere involvement in the welfare of the Miami community.

319. In sum, it is concluded that TBF undertook serious and continuing efforts to stay apprised of the needs, problems and interests of its viewing audience and that it responded to those needs, problems, and interests by airing issue-responsive programming throughout the license term. In addition, it is concluded that Station WHFT(TV) enjoyed a favorable reputation in the Miami community and that it earned its reputation through its programming and substantial efforts at community outreach. Offsetting this record are the serious violations committed by TBF's three directors in their capacity as TBN's directors in

the context of applying for and operating NMTV full power broadcast stations. On balance, considering the service performed by TBF during the license term under review, the nature of the violations of the Communications Act and the Commission's Rules, and the absence of any rule violations pertaining specifically to the operation of Station WHFT(TV), it must be concluded that TBF is still entitled to a renewal expectancy, however minimal.

B. Glendale Issues

1. Misrepresentation in Extension Applications

320. The issue to be resolved is whether Raystay Company made misrepresentations or lacked candor in its applications for extension of time within which to complete construction of its Lancaster and Lebanon (Pennsylvania) LPTV stations, and, if so, the effect thereof on Glendale Broadcasting Company's qualifications to be a licensee.

321. It is well established that an intent to deceive is the *sine qua non* of a misrepresentation issue. Armando Garcia, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988), rev. denied, 3 FCC Rcd 4767 (1988). While misrepresentations involve false statements of fact made with an intent to deceive, lack of candor involves concealment, evasion, and other failure to be fully forthcoming. Both represent deceit, differing only in form. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). Absolute candor is perhaps the foremost prerequisite for FCC licenseship. Catoctin Broadcasting Corp. of New York, 2 FCC Rcd 2126 (Rev. Bd. 1987), aff'd, 4 FCC Rcd 2553 (1989), recon. denied, 4 FCC Rcd 6312; Mid Ohio Communications, 104 FCC 2d 572 (Rev. Bd. 1986), rev. denied, 5 FCC Rcd 940 (1990). Indeed, "the Commission's demand for absolute candor is itself all but absolute." Kate F. Thomas, 8 FCC Rcd 7630, 7632 (Rev. Bd. 1993), citing, Emision de Radio Balmaseda, Inc., 7 FCC Rcd 3852, 3858 (Rev. Bd. 1992), rev. denied, 8 FCC Rcd 4335 (1993), citing, Richardson Broadcast Group, 7 FCC Rcd 1583 (1992).

322. Raystay intentionally made false statements and failed to disclose material information to the Commission in each of its *eight* applications for extension of time within which to complete construction of its LPTV stations in Lebanon and Lancaster, Pennsylvania. Raystay deliberately and repeatedly misrepresented to the Commission that it had entered into lease negotiations with the site owners. It also intentionally and repeatedly misled the Commission by suggesting that a Raystay engineer had visited the proposed transmitter sites in contemplation of Raystay building the stations. Furthermore, Raystay repeatedly lacked candor by not revealing that it was seeking extensions for the purpose of selling the authorizations. Raystay also repeatedly failed to inform the Commission that it was for purely business reasons that George Gardner had not approved the construction of the stations.

323. The evidence reveals that Raystay was granted construction permits for five LPTV stations on July 24, 1990. The construction permits specified an expiration date of January 24, 1992. Two of the stations' antennas were to be co-located atop a structure owned by the Ready-Mixed Concrete Company in Lancaster, Pennsylvania; two more were to be co-located atop the Quality Inn Hotel in Lebanon, Pennsylvania; and a fifth was to be located on property owned by Raystay in Red Lion, Pennsylvania.

324. Initially, it was Raystay's intention, according to a Low-Power TV Business Plan developed by company executive Harold Etsell, to construct all five of the stations and, in concert with Raystay's already-operational LPTV Station W40AF, Dillsburg,

Pennsylvania, to operate them as a regional network in the Harrisburg, Lancaster, Lebanon, and York area. Etsell's plan to create a mini-network among Raystay's six LPTV properties was predicated on cable carriage. George Gardner, who at all relevant times was Raystay's President, sole voting shareholder, and the individual responsible for making the final decision on all significant matters affecting the company, embraced the belief that without cable coverage, Etsell's plan would not be financially viable. George Gardner was aware when the Commission granted the five LPTV construction permits that Station W40AF was losing money. His disappointing experience with Station W40AF convinced him not to authorize any construction of the five stations in the absence of what he personally considered to be a viable business plan.

325. Despite talks with cable operators, program suppliers, and, on a very general level, equipment manufacturers, Raystay's efforts to effectuate Etsell's plan did not yield any tangible results which George Gardner believed justified the expenditure of funds to construct the five stations. Although George Gardner believed that the cable television operators in the area collectively supported the *concept* of creating a regional network of LPTV stations, there was no consensus among them about the stations' programming.

326. In early 1991, George Gardner virtually abandoned efforts for Raystay to construct the stations. George Gardner reassigned Etsell from his position of overseeing the development of the LPTV stations to other unrelated matters, and Raystay began to actively entertain proposals regarding the permits from outside the company. During the remainder

of calendar year 1991, Raystay entered into negotiations to unload the construction permits with no fewer than four entities.

327. In May 1991, Raystay signed a series of contracts with Quality Family Companies which agreed to build and operate the stations at its own expense while allowing Raystay to retain control of the programming. Approximately three months later Raystay exercised its option to terminate the contracts because of alleged breaches by Quality Family Stations.

328. Thereafter, Raystay appears to have decided to get out of the LPTV business altogether. The company engaged in serious negotiations aimed at selling *all* of its LPTV facilities -- the five construction permits and Station W40AF -- to TBN. Those negotiations advanced to a stage where the parties agreed on a sales price for the construction permits, and TBN drafted and sent to Raystay for execution a series of contracts and related applications for consent to the assignment of the various authorizations. However, in December 1991, George Gardner abruptly ordered his staff to cease efforts to sell Raystay's LPTV properties to TBN because he had decided to file an application that would be mutually exclusive with the TBN-related application for renewal of license of Station WHFT(TV), Miami, Florida.

329. Although Raystay had further, unsuccessful negotiations in 1991 to sell its LPTV properties to Robert Shaffner, the company's continuing efforts to dispose of the

construction permits apparently succeeded, if only in part, with a corporation known as Grosat Communications, Inc. Following a number of discussions in 1991, Raystay executed and filed with the Commission an application for consent to the assignment of the Red Lion construction permit to Grosat in January 1992. The Commission granted the assignment application approximately two months later.

330. There is further evidence of Raystay's intent to abandon its development of the LPTV stations. During calendar year 1991, Raystay was in the process of attempting to restructure its existing debt and obtain additional debt financing for the company. Toward that end, Raystay began negotiating with a company by the name of Greyhound Financial Corporation. Greyhound expressed the firm position early on that no proceeds from any loan that it provided to Raystay could be used to develop the LPTV stations. George Gardner and Raystay's Chief Financial Officer, Lee Sandifer, understood that if Raystay wanted to build the LPTV stations, the money to do so would have to come from a source other than Greyhound. Greyhound's restriction on the use of its loan proceeds was reflected in drafts of a Loan and Security Agreement that was circulated in January and June 1992, and in the final agreement that Raystay executed with Greyhound in July 1992.

331. Additionally, at no time during the period that Raystay held the Lebanon and Lancaster construction permits did it ever allocate any money in its annual operating budgets for construction of the stations. The decision not to allocate money for the construction of the stations was a financial one made by George Gardner.

332. By the end of the 18-month construction period, Raystay had not ordered any equipment, and it had not commenced any physical construction of the LPTV stations. Furthermore, George Gardner admits to having had no idea at that time whether construction would ever take place. All he apparently had was a *hope* that a viable business plan might emerge. This is despite the fact that no one at Raystay was actually working on such a plan.

333. In an effort to preserve the construction permits in the event that a deal to use or sell the authorizations materialized, George Gardner made the decision in late 1991 to file what would become Raystay's first set of four applications for extensions of time within which to complete construction of the Lebanon and Lancaster LPTV stations. Each of the applications contained the same two-page supporting exhibit. The exhibit, as a whole, suggested that Raystay had undertaken some efforts toward construction of the stations. Although Raystay was required to explain in each application why construction was not yet completed, the applications carefully avoided disclosing this information. Of course, Raystay had a motive for withholding such details. As the record evidence reveals, Raystay, although fully capable of ordering equipment and constructing the stations, had not done so because of George Gardner's personal reluctance to approve the expenditure of funds in the absence of a business plan that he considered financially viable. Moreover, Raystay was actively trying to sell the construction permits during most of the preceding 18-month construction period. Had Raystay revealed that it wanted to keep the construction permits alive simply to shop for

a buyer, it is doubtful the Mass Media Bureau would have granted any of the extension applications.[40]

334. In further support of the extensions, the four applications represented that Raystay had entered into "lease negotiations" with representatives of the Ready-Mixed Concrete Company or the Quality Inn Hotel. However, the record evidence reveals that no such discussions about a "lease" took place. Furthermore, it was utterly disingenuous for Raystay to characterize as "negotiations" what in reality were nothing more than brief telephone chats between George Gardner's son, David Gardner, and persons at the two transmitter sites. As the record evidence plainly reveals, the *sole* basis for Raystay's reference to "lease negotiations" in each extension application was a mere *one-minute* telephone conversation that David Gardner had in October 1991 with an individual at each site. David Gardner did not initiate those conversations to discuss the terms under which

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[40] See Community Service Telecasters, Inc., 6 FCC Rcd 6026, 6029 (1991), which states:

> We have often said that the mere filing of an assignment application does not entitle the permittee to a grant of its extension application. See, e.g., Rappaport Communications, Inc., 2 FCC Rcd 175 (1987), and New Orleans Channel 20, 104 FCC 2d at 314. Furthermore, when we amended our rules in 1985 to establish stricter guidelines for the granting of broadcast applications for extensions of time to construct, Construction of Broadcast Stations, 102 FCC 2d 1054 (1985), we deleted that part of Section 73.3534 of the Rules that had permitted grants of extension applications upon a showing of 'other matters,' such as the pendency of an assignment application and the assignee's ability to quickly construct the station. See also Community Telecasters of Cleveland, Inc., 58 FCC 2d 1296, 1303 (Rev. Bd. 1976) (even under the old rule, the permittee's extension of time request filed for the purpose of assigning the permit and recovering its expenses does not warrant grant of an extension.).

Raystay would be permitted to use the sites. Rather, he called the Ready Mixed Concrete Company and the Quality Inn Hotel to arrange for inspections of the sites by an engineer working for TBN -- a company with which Raystay was negotiating at the time to sell the construction permits. Consequently, any suggestion that David Gardner carried on "lease negotiations" during the two 60-second telephone calls is simply false.

335. In a further effort to justify its request for an extension of time to construct the stations, Raystay represented in each application that "[a] representative of Raystay *and an engineer* have visited the antenna site and ascertained what site preparation work and modifications need to be done at the site." None of the four extension applications identified the "engineer." As the record evidence reveals, the "engineer" referenced in the extension applications was not a Raystay engineer at all, as the applications implied. To the contrary, the engineer to whom the extension applications referred was Tom Riley, who had inspected the two transmitter sites in October 1991 on behalf of TBN. Raystay's intent to deceive is indisputable. Riley did not inspect the transmitter sites to ascertain what preparations or modifications Raystay needed to make in order for Raystay to construct the stations; he inspected the sites to determine what TBN needed to do if and when TBN bought the authorizations from Raystay.

336. In reliance on the above and other representations, the Commission granted Raystay's first set of extension applications on January 29, 1992. The Commission gave Raystay until July 29, 1992, to construct and commence operations of the four new facilities.

337. During the second extension period from January 29 to July 29, 1992, Raystay continued to entertain expressions of interest from individuals interested in buying the four construction permits. No equipment was ordered for the stations and no construction was commenced during this time because no business plan that George Gardner considered financially viable was developed. Furthermore, Raystay had no lease negotiations with anyone from the Ready Mixed Concrete Company or the Quality Inn Hotel during the six month period, and no Raystay engineer visited either site during that time to ascertain what preparation work or modifications needed to be made.

338. Nevertheless, when Raystay filed its second set of applications on July 9, 1992, requesting additional time to construct the four LPTV stations, each application contained the *identical* supporting exhibit that Raystay had used to support each of its December 1991 extension applications. As before, none of the applications attempted to explain the reason why Raystay had not completed construction. Moreover, there was no basis whatsoever for Raystay's representations concerning lease negotiations or visits to the transmitter sites by an engineer. Also, despite representations suggesting the contrary, Raystay had no talks at all with equipment *or* program suppliers between January and July 1992. These statements to the Commission in Raystay's July 1992 extension applications were not simply misleading; they were knowingly false statements made with the intention to deceive. The Commission relied on Raystay's representations when it granted the second set of applications on September 23, 1992.

339. In sum, Raystay did not merely put a clever "spin" on the information in its extension applications or embellish certain matters in order to enhance its chances before the Commission. Rather, Raystay deliberately omitted decisionally significant facts from the applications, and it intentionally included information in the applications which it knew to be false.

340. It is well established that the traits of honesty and forthrightness are of paramount concern to the Commission. In Character Policy Statement, 102 FCC 2d at 1211, the Commission stated:

> We believe it necessary and appropriate to continue to view misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust. The integrity of the Commission's processes cannot be maintained without honest dealings with the Commission by licensees.

It is beyond question that Raystay's misrepresentations and lack of candor are grounds for Glendale's disqualification. Raystay engaged in deliberate acts of dishonesty in applications filed with the Commission. George Gardner, Raystay's president, was actively involved in the process of reviewing the applications and attesting to the accuracy of the information provided therein. George Gardner, of course, is the controlling principal in Glendale. The misrepresentations and lack of candor that Raystay perpetrated upon the Commission in its eight LPTV extension applications establish a pattern of misconduct suggesting a pervasive unwillingness or inability on the part of George Gardner to meet the basic responsibilities of a Commission licensee. See RKO General, Inc. (WAXY-FM), 4 FCC Rcd 4679 (Rev. Bd. 1989), vacated, 5 FCC Rcd 642 (1990) (requiring George Gardner to submit a showing of

good character because of serious misconduct before the Commission). Accordingly, the Presiding Judge should resolve this issue against Glendale.

2. Misrepresentation in LPTV Assignment Application

341. The issue to be resolved is whether Raystay made misrepresentations or lacked candor in its application for consent to the assignment of the construction permit for LPTV Station W23AY, York (Red Lion), Pennsylvania, to Grosat Communications, Inc., and, if so, the effect thereof on Glendale's qualifications. Based on the record evidence, Raystay intentionally overstated its legal and engineering costs in order to evade the Commission's restriction on reimbursable expenses. Thus, Raystay made a material misrepresentation. However, Raystay's misrepresentation in this instance does not adversely impact on Glendale's qualifications because George Gardner had no role in the misrepresentation.

342. Section 310(d) of the Communications Act of 1934, as amended, states:

> No construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Section 73.3597 of the Commission's Rules, which implements § 310(d) of the Act, and which is expressly applicable to Low Power Television construction permits by virtue of Section 74.780 of the Commission's Rules, provides in pertinent part:

(c) . . .

> (2) The FCC will not consent to the assignment or transfer of control of the construction permit of an unbuilt station if the agreements or understandings between the parties provide for, or permit, payment to the seller of a sum in excess of the aggregate amount clearly shown to have been legitimately and

> prudently expended and to be expended by the seller, solely for preparing, filing, and advocating the grant of the construction permit for the station, and for other steps reasonably necessary toward placing the station in operation.

Furthermore, § 73.3597(c)(3)(ii) provides:

> When the seller is to receive reimbursement of his expenses, the applications of the parties shall include an itemized accounting of such expenses, together with such factual information as the parties may rely upon for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (c)(2) of this section.

343. Sandifer agreed on behalf of Raystay to sell the Red Lion construction permit to Grosat for the sum of $10,000 *before* he had an understanding as to the legitimate and prudent expenses that Raystay had incurred in connection with that particular authorization. In preparing his estimate of the Red Lion expenses, Raystay's communications counsel concocted a theory for allocating Raystay's expenses that had no foundation in law. Furthermore, he did so for the sole purpose of justifying the $10,000 sales price, an amount in excess of that to which Raystay was legitimately entitled.

344. The Review Board's decision in Integrated Communication Systems, Inc. of Massachusetts, 5 RR 2d 725 (Rev. Bd. 1965), is regarded as the seminal case on the subject of the allocation of expenses. In Integrated, the Review Board approved a settlement agreement between two mutually exclusive applicants for a construction permit for a new television station in Boston, Massachusetts. The dismissing party's Boston application was one of three applications that it had concurrently filed. In arriving at the dismissing party's

legitimate and prudent legal expenses, its counsel reviewed time sheets to determine how much work had been performed in connection with the Boston application. The resulting figure was equal to one-third of the legal expenses incurred by the dismissing party in connection with the preparation, filing, and prosecution of all three of its applications.

345. At the very least, the Integrated case stands for the well established Commission policy that in determining a party's legitimate and prudent expenses, one must focus on the *documented* costs that are *actually* incurred in preparing, filing, and advocating the grant of the particular application in question. *If* one assumes that Integrated represents that an allocation of expenses may be performed when multiple applications are involved (and this is not at all clear from the text of the decision), *the only* allocation referenced in the case and arguably sanctioned by the Commission is a pro rata allocation.

346. Raystay, however, did not focus on the actual, documented expenses that it incurred in connection with preparing, filing, and advocating the grant of the Red Lion construction permit. Additionally, it did not determine its legitimate and prudent expenses by employing a pro rata allocation of costs associated with the five LPTV applications that it concurrently filed. Rather, Raystay conveniently allocated to the Red Lion construction permit one-half of the total legal expenses and one-third of the total engineering expenses incurred in connection with the five authorizations. There is no documented evidence, though, that half of all the LPTV services that the law firm of Cohen & Berfield performed for Raystay was in fact performed in connection with the Red Lion application.

Furthermore, the assignment application plainly overstated the engineering expenses that Raystay actually incurred in connection with its Red Lion application. Hoover sent his invoice to Raystay after he performed his services. The invoice makes no allocation of expenses among the multiple applications involved, and the invoice does not suggest that Hoover devoted more time to any one application than he did to another. On its face, the invoice clearly shows that Hoover billed Raystay the same amount for each of the five applications. Raystay ignored all but the total amount of the Hoover invoice and, on the theory that there were three transmitter sites involved, simply assumed that one-third of the work that Hoover had performed was allocable to the Red Lion application. That theory, of course, had no basis in law or fact.

347. Raystay knew when it filed the assignment application with the Commission that the reimbursable expenses it was seeking bore no relationship to the actual, documented costs that it had incurred in connection with preparing, filing, and advocating the grant of the Red Lion construction permit application. It also knew that an allocation scheme had been employed to determine its reimbursable expenses *and* that the allocation scheme that it adopted was very different indeed than an ordinary pro rata allocation scheme. Raystay made no attempt whatsoever to reveal these matters to the Commission in its assignment application.

348. The only conclusion that can be drawn is that Raystay deliberately provided false information to the Commission and lacked candor in its application for consent to the

assignment of the Red Lion construction permit to Grosat. Notwithstanding, the evidence reveals that George Gardner, the common link between Raystay and Glendale, had no involvement in preparing, reviewing, signing, or filing the Raystay assignment application. Although Raystay is controlled by George Gardner, and the misrepresentation that Raystay perpetrated upon the Commission further establishes a pattern of misconduct by entities in which George Gardner is a principal, it does not, in and of itself in this instance, impugn on the qualifications of Glendale. Accordingly, the issue should be resolved in Glendale's favor.

V. Ultimate Conclusions

349. Issue (d) requires the determination of which of the two proposals would, on a comparative basis, better serve the public interest. Issue (e) requires the determination of which of the applications -- TBF's or Glendale's -- should be granted. Inasmuch as TBF is qualified to remain a licensee and Glendale is not qualified to be a licensee, the TBF application should be granted and the Glendale application should be denied.

Forfeiture

350. Paragraph 52 of the HDO requires the determination of whether an order for forfeiture in an amount not to exceed $250,000 should issue against TBF, TBN and/or NMTV for willful and/or repeated violations of Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §310(d), and/or Section 73.3555(e) of the Commission's Rules, 47 C.F.R. §73.3555(e), which occurred or continued within the applicable statute of limitations. For the reasons which follow, the Bureau recommends a forfeiture of $250,000 each against TBN and NMTV.

351. Section 310(d) of the Communications Act prohibits the transfer of a permit or license without the express approval of the Commission. See Astroline Communications Co. Ltd. Partnership v. FCC, 857 F.2d 1556, 1563 (D.C. Cir. 1988) ("Astroline"); Lorain Journal Co. v. FCC, 351 F.2d at 828-29 (D.C. Cir. 1965). Here, the evidence shows that

NMTV never controlled the permits and licenses held in its name. Rather, control of NMTV, and thus control of those authorizations, always resided with TBN. Hence, TBN and NMTV violated Section 310(d) of the Act. Astroline. The violations began with NMTV's acquisition of the permit for Station KMLM(TV), Odessa, Texas, on June 30, 1987, and have continued to the present. As further established in the Bureau's proposed findings, those violations were willful within the meaning of the rules; that is, Crouch and TBN knew they were controlling NMTV, regardless of whether there was any intent to violate the Act. See Abacus Broadcasting Corp., 8 FCC Rcd at 5115.

352. Section 73.3555(e), formerly Section 73.3555(d), prescribes limits for the number of cognizable interests which may be held by a party, including all parties under common control. Generally, the limit for such interests is 12. Only if at least one of the interests is minority-controlled, can a party hold 13 cognizable interests. Further, only if at least two of the interests are minority-controlled, can a party hold 14 cognizable interests. Here, the evidence shows that, for a period of four years and six months -- specifically, from June 30, 1987 to December, 1991 -- Crouch and TBN held cognizable interests in 13 or 14 full power commercial television stations, none of which was minority-controlled. As the Bureau's proposed findings also show, those holdings were willful within the meaning of the rules; that is, Crouch and TBN knew they were controlling NMTV, regardless of whether there was any intent to violate the rules. See Abacus Broadcasting Corp., 8 FCC Rcd at 5115.

353. Section 503(b) of the Communications Act authorizes the imposition of forfeitures on broadcast licensees for willful and/or repeated violations of the Communications Act or the Commission's Rules. In arriving at an appropriate figure, the Commission is to take into account the nature, circumstances, extent and gravity of the violations. In addition, with respect to the violator, the Commission is to consider the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. For continuing violations, the Commission may assess up to $250,000. Section 503(b)(6) allows issuance of forfeitures for violations committed during the current license term, which, in the case of Station WHFT(TV), began February 1, 1987.[41]

354. The evidence reveals two distinct sets of violations: TBN's and NMTV's continuous violations of Section 310(d) of the Communications Act, which began on June 30, 1987; and Crouch's and TBN's violations of Section 73.3555(e) of the Commission's Rules, which began on June 30, 1987, and continued to December, 1991. Hence, the violations were repeated. The violations were also willful. The violations were a direct consequence of repeated abuses of the Commission's processes. Specifically, TBN and NMTV acquired through assignment applications authorizations to which they were not entitled by relying on a hopelessly narrow-minded legal theory; a legal theory which they failed to explicate to the Commission for more than four years and only after being confronted by a petition to deny

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[41] The imposition of forfeitures against TBN and NMTV is not affected by the recent decision in United States Telephone Association v. FCC, No. 92-1321 (D.C. Cir. released July 12, 1994). That decision, while rejecting the Commission's scheme for assessing forfeiture amounts, left intact the statutory provision for imposing fines upon which the instant forfeitures are based.

the acquisition of a Wilmington, Delaware, facility. In addition, TBN and NMTV did not fully set forth in their assignment applications the nature and extent of their relationship, thereby depriving the Commission of the opportunity to determine for itself whether NMTV qualified as a minority-controlled company. Indeed, the extent and gravity of these violations approach those warranting a loss of license.

355. With respect to TBN and NMTV, both are fully culpable. Both knew throughout the application process, the construction of the stations, and their operation, that NMTV was merely an operating division of TBN and that NMTV had no viability whatsoever without TBN's money, programming and personnel. Further, both knew that NMTV was wholly at the mercy of TBN's accounting department in terms of how much money would be credited to NMTV. The record reveals no history of prior offenses by NMTV. However, in International Panorama TV, Inc. (KTBN-TV), FCC 83D-4 (released January 25, 1983), Crouch was found to have abdicated responsibility to assure himself that all representations in a renewal application were true and correct. Both TBN and NMTV have more than sufficient assets to pay the maximum forfeitures. Considering all the above, the Bureau recommends that forfeitures in the amount of $250,000 be imposed against TBN and $250,000 against NMTV. The amounts recommended relate directly to the seriousness of the offenses, their wilfulness and their longevity.

356. In sum, the Bureau recommends: 1) grant of TBF's captioned application for renewal of license for Station WHFT(TV), Miami, Florida; 2) denial of Glendale's captioned

application for a construction permit for a new television station in Miami, Florida; and 3) imposition of monetary forfeitures against TBN and NMTV in the amount $250,000 each.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dziedzic
Chief, Hearing Branch

James W. Shook
Attorney
Mass Media Bureau

Gary P. Schonman
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

August 15, 1994

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 15th day of August 1994, sent by regular United States mail or delivered by hand, copies of the foregoing, "Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" to:

Howard A. Topel, Esq.
Mullin, Rhyne, Emmons & Topel
1225 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036-2604

Colby M. May, Esq.
May & Dunne, Chartered
1000 Thomas Jefferson, Street, N.W., Suite 520
Washington, D.C. 20007

Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006-1851

Lewis I. Cohen, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036

David E. Honig, Esq.
3636 16th Street, N.W., Suite B-863
Washington, D.C. 20010

Gene A. Bechtel, Esq.
Bechtel & Cole
1901 L Street, N.W., Suite 250
Washington, D.C. 20036

Michelle C. Mebane

Michelle C. Mebane